

AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS  
AND COVENANTS

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ENCLAVES OF VENICE NORTH SUBDIVISION

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OF  
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**EXHIBIT "A"**

**AMENDED AND RESTATED**

**DECLARATION OF RESTRICTIONS AND COVENANTS  
OF  
ENCLAVES OF VENICE NORTH SUBDIVISION**

*[Substantial rewording of Declaration of Covenants.*

*See original Declaration of Covenants and amendments thereto for present text.]*

The members of **THE ENCLAVES OF VENICE NORTH HOME OWNERS ASSOCIATION, INC.** (herein, the "Association") a corporation not-for-profit under the laws of the State of Florida, hereby adopt the following Amended and Restated Declaration of Restrictions and Covenants. The Amended and Restated Declaration of Restrictions and Covenants supersede and replace the original Declaration and all amendments thereto.

**WITNESSETH:**

**WHEREAS**, that certain real property located in Sarasota County, Florida described more particularly on Exhibit "A" attached hereto and made a part hereof has previously been submitted to the Declaration of Restrictions and Covenants;

**WHEREAS**, the above-described property constitutes all of the property shown on that subdivision plat for "Enclaves of Venice North Subdivision", a subdivision according to the plat thereof as recorded in Plat Book 44, Pages 13, 13A and 13B, inclusive, of the Public Records of Sarasota County, Florida;

**WHEREAS**, the **ENCLAVES OF VENICE NORTH HOME OWNERS ASSOCIATION, INC.** is the Homeowners Association that is charged with the ownership, operation, maintenance, repair and replacement of the Common Property herein described for the benefit of the owners of Lots within the Subdivision; and

**WHEREAS**, the purpose of these Covenants and Restrictions is to enhance and protect the value, attractiveness and desirability of the lots.

**NOW, THEREFORE**, the members of the **ENCLAVES OF VENICE NORTH HOME OWNERS ASSOCIATION, INC.** hereby adopts the following as an amendment to and complete restatement of the Declaration of Covenants and Restrictions and again declare that all of the real property described above shall be held, sold and conveyed subject to the following covenants, easements, restrictions and conditions, all of which shall constitute covenants running with the land and shall be binding on and inure to the benefit of all parties having any right, title or interest in the above-described property or any part thereof, and their heirs, successors and assigns.

## 1. DEFINITIONS.

The following definitions apply with respect to this Declaration, Articles of Incorporation and Bylaws:

1.1 "**Association**" shall mean and refer to "**ENCLAVES OF VENICE NORTH HOME OWNERS ASSOCIATION, INC.**", a Florida not-for-profit corporation, its successors and assigns.

1.2 "**Common Area**" or "**Common Property**" means those tracts of land which are (a) deeded to and owned by the Association and designated on the deed as Common Property, or (b) labeled as Common Area on the plat. "Common Area" or "Common Property" does not mean any area dedicated in the plat to the county or municipal government or other party other than the Association.

1.3 "**Declarant**" means LAND RESOURCES, LLC, a Florida limited liability company, its successors and assigns.

1.4 "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions, and Easements for the ENCLAVES OF VENICE NORTH SUBDIVISION and all supplements and amendments to this Declaration.

1.5 "**Lot**" means any Lot shown on the Subdivision plat along with any improvements constructed on the Lot.

1.6 "**Member**" means a member of the Association. Each owner of a Lot in the Subdivision is a Member.

1.7 "**Mortgagee**" means any institutional lender that holds a bona fide mortgage encumbering a Lot. The term "institutional lender" specifically includes, but is not limited to, a bank, a savings and loan association, a mortgage lending company, an insurance company, a credit union, and the Federal National Mortgage Association or similar agency.

1.8 "**Owner**" means the record owner, whether that be one or more persons or entities, of the fee simple title to any Subdivision Lot, or a life estate in any Lot. "Owner" does not mean a Mortgagee.

1.9 "**Plat**" means the plat of ENCLAVES OF VENICE NORTH SUBDIVISION and the plats of any additional land annexed to and made part of ENCLAVES OF VENICE NORTH SUBDIVISION from time to time. The subdivision plat of ENCLAVES OF VENICE NORTH SUBDIVISION is recorded at Plat Book 44, Pages 13, 13A and 13B of the Official Records of Sarasota County, Florida.

1.10 "**Public Records**" means and refers to the Official Public Records of Sarasota County, Florida.

1.11 "**Stormwater Management System**" means that part of the Common Areas or those portions of Lots which are designated on the plat as being a part of the Stormwater Management System.

1.12 "**SWFWMD**" shall mean the Southwest Florida Water Management District.

1.13 "**Tract**" means those tracts shown on the Plat.

1.14 "**Voting Interest**" means the voting rights distributed to the Members of the Association, and, except as otherwise provided in this Declaration, shall be one (1) vote for each Lot located within the Subdivision or as reflected on the Plat.

## 2. **SUBDIVISION DEVELOPMENT PLAN**

2.1 **Single-Family Neighborhood.** The Subdivision has been developed for single-family residential usage.

2.2 **Architectural Control.** To promote architectural and aesthetic quality in the construction of improvements in the Subdivision, all plans and specifications for proposed Construction Work shall be submitted to the Architectural Committee for evaluation and written approval pursuant to Section 3 prior to commencement of construction.

2.3 **Uniform Maintenance.** The uniform maintenance of all dwellings, yards and common areas shall be the responsibility of the Association and each owner as set forth in this Declaration. The Association shall be responsible for the maintenance and care of the Common Property and of the trees, grass, shrubs and plantings placed on each Lot by the Declarant or Approved Builder, which shall include the front, rear and side yards of each Lot. The cost of the said landscaping and maintenance shall be common expenses of the Association as hereafter set forth. Each dwelling erected on a Lot shall be maintained in a structurally sound and attractive manner by and at the expense of the Lot owner, as herein required. At the option of the Association's Board of directors, the Lot owner shall be responsible for the maintenance, repair and replacement of any trees, shrubs or plantings placed on the owner's Lot by the owner or the owner's predecessor in title. The Association Board of Directors may, but is not required to, assume the responsibility for such owner trees, shrubs or plantings. To assure the Subdivision maintains a uniform and aesthetically pleasing appearance, no color changes to dwellings, nor changes, deletions or additions to landscaping shall be permitted without the prior written approval of the Architectural Review Committee.

## 3. **ARCHITECTURAL REVIEW**

To ensure that the homes and accessory buildings within the neighborhood are harmonious, except as otherwise permitted, the Association's Architectural Review Committee must approve all construction, improvements and alterations that occur

within the Subdivision. Although certain requirements are specified herein, the Architectural Review Committee will not be limited to the specific requirements but rather will have broad discretion.

**3.1 Architectural Review Committee.** The Architectural Review Committee shall be composed of not less than three (3) or more than five (5) members, who need not be members of the Association. Members of the Architectural Review Committee shall be appointed by and shall serve at the pleasure of the Board. A majority of the Architectural Review Committee members shall constitute a quorum to transact business at any meeting of the Architectural Review Committee, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the Architectural Committee. Any vacancy occurring on the Architectural Review Committee because of death, resignation, or other termination of service of any member shall be filled by the Board. No member of the Architectural Review Committee shall be entitled to compensation for services performed unless authorized by the Board. The Architectural Review Committee may employ independent advisers, in which case reasonable compensation to such advisers shall be paid by the Association as part of the common expenses. All copying, telephone, telecopy, and other out-of-pocket expenses of the Architectural Review Committee shall also be paid by the Association. All expenses of the Architectural Review Committee shall also be paid by the Association as part of the common expenses. All decisions of the Architectural Review Committee shall be final and binding on the Lot owners.

### **3.2 Architectural Review Procedure.**

**3.2.1 Construction Subject to Review.** All construction, improvements, remodeling, or modification on or to a Lot, except interior alterations not affecting the external appearance of the Lot, must be approved in writing in advance by the Architectural Review Committee. This specifically includes, but is not limited to, painting or other alteration of a building (including doors, windows and trim); alteration or painting of driveways; replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings; installation of a well; and initial landscaping and any material alteration of landscaping.

**3.2.2 Application.** The written plans to be submitted for approval shall include: (i) the construction plans and specifications, including all proposed clearing and landscaping; (ii) elevations of all proposed improvements; (iii) a Lot survey showing current improvements; and (iv) such other items as the Architectural Review Committee requires. No construction on any Lot shall be commenced and no Lot shall be modified except in accordance with the submitted plans. Any modification to the approved plans must also be reviewed and approved by the Architectural Review Committee.

**3.2.3 Basis for Decision.** The Architectural Review Committee, in making its decisions, may consider purely aesthetic matters that in the sole opinion of the Architectural Review Committee will affect the desirability or suitability of the construction. The Architectural Review Committee will not be limited to the specific restrictions and requirements of this Section in making its decision.

**3.2.4 Application Fee; Deposit.** The Architectural Review Committee may establish procedures for the review of applications, and impose a reasonable fee (not to exceed the amount of Five Hundred Dollars (\$500) to be paid by the applicant. The Architectural Review Committee also may require any applicant to post a security deposit not to exceed the amount of Five Thousand Dollars (\$5,000) to ensure that all work is affected only in accordance with approved plans and to pay the costs and attorney's fees of the Association. The Architectural Review Committee shall retain the security deposit until all work has been completed in accordance with the approved plans and approved by the Architectural Review Committee.

**3.2.5 Notification of Approval.** The Architectural Review Committee must notify an applicant in writing of its decision within thirty (30) days of receiving a completed application, application fee and security deposit. This time period shall not commence until the completed application, fee and deposit are received. The Architectural Review Committee may grant itself one extension of twenty (20) days if necessary, without the consent of the applicant. If approval or disapproval is not given within thirty (30) days after submission of a completed application, fee and deposit (or fifty (50) days if an extension is required), the application will be deemed approved unless the applicant agrees to a second extension of time. The applicant shall have the burden of proving by clear and convincing evidence when the written and completed application, fee and deposit were received by the Association.

**3.2.6 Enforcement.** If any construction or modification is undertaken that has not been approved or that deviates substantially from the approved plans, it is automatically disapproved and the Association may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs of such action including attorney's fees at trial or on appeal. Any such action also shall determine entitlement to any retained security deposit. The Association is authorized to deduct its reasonable attorney's fees and costs from the security deposit without the owner's consent. The Association and each owner will have the right to enforce these provisions. The failure to strictly enforce these provisions as to a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.

**3.3 Liability.** The Architectural Review Committee and the Association will not be liable to the applicant, any Lot owner or to any other party to ensure that the proposed plans comply with any applicable building codes, for inadequacy or deficiency in the plans resulting in defects in the improvements, or to ensure that construction was done in accordance with the plans.

3.4 **Release from Minor Violations.** The Architectural Review Committee shall have the right, by written instrument, at any time to release a Lot from minor violations of this Declaration or the plat including, without limitation: (a) encroachments into easements, (b) encroachments over building restriction lines, and (c) construction of less than the required minimum square footage for the dwelling provided that the square footage is at least 90% or the required minimum.

#### 4. USE AND CONSTRUCTION RESTRICTIONS

The following restrictions are imposed on the use of the Lots and on the construction of improvements to the Lots:

4.1 **Residential Building.** Except as otherwise provided herein, the Lots may only be used for residential purposes and for no other purpose. No business or commercial building may be erected on any Lot, and no business, occupation, profession, or religious or charitable enterprise may be conducted on any part thereof, except that: (a) an owner may conduct a home occupation (as defined in the Sarasota County Zoning Regulations, as amended) on his Lot, if the home occupation is permitted by Sarasota County ordinances without special permit approval or other special authorization; does not involve any outdoor activity other than ingress and egress; is not accompanied by the display of any exterior sign; complies with all other provisions of this Declaration and the Rules and Regulations; and is otherwise approved by the Association; (b) an owner and his agents may show his Lot and improvements thereon for sale or lease; and (c) business activities necessary for the construction of a dwelling or other improvements on an owner's Lot shall be permitted.

4.2 **Building Restriction Lines.** No dwelling shall be located nearer to the streets or adjacent Lots than the applicable building setback requirements on the applicable plat or as established by the zoning regulations pertaining to or applicable to the subject property.

4.3 **Minimum Floor Space.** Each dwelling located on a Lot must contain at least 1,500 square feet of floor area. "Floor area" means only enclosed livable floor area and does not include garages, porches (open or with screened enclosures), terraces or patios.

4.4 **Garages.** Unless otherwise specifically approved by the Architectural Review Committee, no building may be constructed separate and apart from the dwelling. Each dwelling must have an enclosed garage to accommodate at least two (2) and not more than two (2) cars. No carports will be permitted. Without the prior written approval of the Architectural Review Committee, no garage may be enclosed permanently or converted to another use without the substitution of another garage on the Lot meeting the requirements of this Declaration.

4.5 **Driveways.** All Lots must have a paved driveway of stable and permanent construction extending from the adjacent street (road curb) to the dwelling. All driveways must be of concrete, asphalt, or other approved material.

4.6 **Exterior Color and Materials.** The color and materials of all exterior surfaces are subject to the prior written approval of the Architectural Review Committee. The Architectural Review Committee may promulgate a list of approved colors and materials for this purpose. This Restriction includes without limitation window tints and films.

4.7 **Pools, Play Facilities, and Lighting.** All recreation facilities constructed or erected on a Lot, including, without limitation, swimming pools, spas, and any other play or recreational structures, basketball backboards, platforms, playhouses, dog houses, or other structures of a similar kind or nature must be adequately walled, fenced, or landscaped in a manner specifically approved by the Architectural Review Committee before such facility is constructed or erected. All exterior lighting must be specifically approved by the Architectural Review Committee.

4.8 **Non-Interference with Easements.** No structure, planting, or other material may be placed or permitted to remain on a Lot if it may damage or interfere with the installation and maintenance of any entry way, hedge, planting, tree, grass, fence, or other improvement or landscaping located within the Common Property or Stormwater Management System. Any easement area located on a Lot and all improvements on an easement area shall be maintained by the owner of the Lot whereon the easement area lies, except for those easement areas the maintenance of which is the responsibility of a public authority, utility, or the Association. In no event shall an owner interfere with the maintenance of an easement area on the owner's Lot by the party responsible for maintaining the same. This provision may be enforced by any person or party benefitting from the easements or responsible for the maintenance of them.

4.9 **Drainage.** The development plans for the Subdivision approved by Sarasota County require each Lot to be graded in a specified manner to provide proper drainage in accordance with environmental and wetlands considerations. Accordingly, prior to construction of a dwelling, the owner shall grade his Lot in conformity with the detail grading plan for the Lot as reflected on sketches approved by Sarasota County. No drainage easement, swale, lake or pond may be obstructed, filled in, or altered without the written approval of the Association and applicable governmental authorities. Pulling, cutting, mowing, treatment with herbicides, or other removal of littoral zone vegetation is strictly prohibited unless otherwise authorized by the Sarasota County Resource Protection Office.

4.10 **Utility Connections.** Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone, and television must be run underground from the connecting point therefrom to the dwelling in such a manner as is acceptable to the respective utility authority or company and the Architectural Review Committee. Wells

may be installed only for irrigation purposes, and only as may be allowed and permitted by the Association and applicable governmental authority.

**4.11 Air Conditioning Units.** No window or wall air conditioning unit will be permitted on any Lot.

**4.12 Mailboxes.** All mailboxes, paper boxes, or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or permitted in only the location approved by the Architectural Review Committee and must be constructed according to a size, design and material approved by the Architectural Review Committee. Owners shall promptly maintain, repair and replace their mailboxes according to written standards adopted by the Architectural Review Committee.

**4.13 Antennae, Aerials, and Satellite Dishes.** No television, radio, or other antenna or satellite system may be installed on the Common Areas by any person other than the Association. Certain television, satellite, or other antenna systems may be erected or installed within a Lot subject to compliance with the following requirements:

**4.13.1 Permitted Antennas** include: (1) direct broadcast satellite dishes (DBS) that are less than one meter in diameter or (2) multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement.

**4.13.2 Location of Permitted Antennas.** To the extent feasible, all permitted antennas must be placed in locations that are not visible from any street and in locations to minimize annoyance or inconvenience to other occupants if this placement would still permit reception of an acceptable quality signal. It shall be the obligation of the owner to comply with all applicable local, state and federal safety requirements. It is the intent of this restriction to comply with the Telecommunications Act of 1996. Nothing herein shall be interpreted or applied by the Association to prevent or unreasonably delay antenna installation, maintenance or use; unreasonably increase the cost of antenna installation, maintenance or use; or preclude reception of acceptable quality signals. Owners are encouraged to seek guidance from the Association concerning these matters but do not have to receive Association approval prior to installation. However, installation must be in accordance with these provisions and reasonable rules and regulations adopted by the Board to interpret and clarify these regulations.

**4.13.3 Safety Requirements.** To safeguard the safety of the Lot owners, occupants of the Lot in which the antenna is located, neighboring occupants, and other owners, it shall be the obligation of the owner to comply with all applicable local, state and federal safety requirements, including but not limited to obtaining a permit for the installation of the antenna, if any, hiring licensed contractors with sufficient expertise and adequate insurance to protect their work, installing the antennas away from power lines and other potentially dangerous areas, installing and using the antenna in

accordance with safety recommendations and requirements of the antenna manufacturer, and in accordance with the customs and standards for the antenna industry, including compliance with electrical code requirements to properly ground the antenna, and installation requirements to properly secure the antenna.

**4.13.4 Proviso.** It is the intent of this provision to comply with the Telecommunications Act of 1996. Nothing herein shall be interpreted or applied by the Association to prevent or unreasonably delay antenna installation, maintenance or use; unreasonably increase the cost of antenna installation, maintenance or use; or preclude reception of acceptable quality signals. Lot owners are encouraged to seek guidance from the Association concerning these matters but do not have to receive Association approval prior to installation. However, any installation must be in accordance with these provisions and reasonable rules and regulations adopted by the Board to interpret these restrictions.

**4.14 Clothes Drying Area.** Exterior laundry and clothes line(s) are permitted on a Lot, but must be installed in a location approved by the Architectural Review Committee so as to minimize or hide their appearance. Laundry and clothes lines are prohibited on the Common Areas.

**4.15 Signs.** No sign shall be placed in the Common Areas without prior written approval of the Architectural Review Committee. The size, color, and design of all signs located on a Lot will be subject to the approval of the Architectural Review Committee. No sign of any kind shall be displayed to general view on any Lot (whether free-standing, attached to a building, or displayed in a window) except under any of the following circumstances:

4.15.1 Directional or traffic signs may be installed by the appropriate governmental authority, or by the Board, and entrance or other identification signs may be installed by or with the consent of the Architectural Review Committee;

4.15.2 One "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on a Lot by the owner or the agent for such owner;

4.15.3 A name plate and address plate in size and design approved by the Association may be displayed on a Lot; and

4.15.4 One sign of reasonable size provided by a contractor for security services may be installed within ten feet (10') of any entrance to the home.

**4.16 Temporary Structures.** No structure of a temporary nature, whether a trailer, tent, shack, garage, barn, or any other such building is permitted on a Lot. This restriction excludes temporary buildings used in connection with and during the construction or substantial remodeling of a dwelling if approved by the Architectural Review Committee, or by the Association.

**4.17 Completion of Construction and Repairs.** The improvement of a Lot and the construction, repair, or remodeling of any improvement must be diligently and continuously pursued once begun and, in any event, promptly completed. The Architectural Review Committee may, as a condition of approval, impose a deadline to complete construction. In addition to any other remedies, the Association may impose a fine for each day of violation for work that is not diligently pursued, continued, and completed.

**4.18 Maintenance of Exteriors.** Each owner shall at all times maintain, repair and replace the exterior of all structures on the owner's Lot and any and all fixtures attached thereto in a sightly manner. If an owner fails to undertake the necessary maintenance, repair or replacement within five (5) business days of written notice of the violation (given by the Association, or the Architectural Review Committee) or fails to complete the work within 15 days of the notice, the Association may effect the repairs or maintenance to the owner's Lot to preserve the beauty, quality, and value of the neighborhood and the costs of these repairs or maintenance plus a 15% administrative fee shall be payable by the owner to the party effecting the work. If the owner fails to make this payment within thirty (30) days of demand, the costs and fee will constitute an Individual Lot Assessment against the owner's Lot, which may be collected in the same manner as an assessment as provided in Section 720.3085, Florida Statutes and Section 4 of the Declaration. Each owner grants the Association, and its respective contractors, employees and agents a perpetual and irrevocable easement to enter onto the owner's Lot to carry out the work, and releases those parties from all liability with respect to such work. Additionally, the Association may impose a fine for each day this paragraph is violated.

**4.19 Noxious Vegetation.** No owner may permit the growth of noxious weeds or vegetation on the owner's Lot or on the land lying between the street pavement and the front lot line of the owner's Lot. All unimproved areas of a Lot must be maintained in an attractively landscaped and sightly manner. The Association may impose a fine for each day this paragraph is violated.

**4.20 Litter, Trash, Garbage.** No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on any Lot except in closed sanitary containers. Trash containers must be kept inside a garage or otherwise hidden from public view. Trash containers may be placed at the front of the Lot on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

**4.21 Nuisances.** No owner or other person may cause or permit unreasonable noises or odors on the owner's Lot. No owner or other person may commit or permit any nuisance, any immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to the other owners or their guests, in the sole opinion of the Board of Directors.

**4.22 Parking of Wheeled Vehicles and Boats.** Cars, trucks, tractors, recreational vehicles, and trailers (collectively called "Vehicles") must be kept at all

times completely inside a garage and are not permitted to be parked elsewhere on a Lot or on a street within the Plat except as otherwise specifically permitted in this paragraph. Boats and boat trailers must be kept at all times completely inside a garage and are not permitted to be parked elsewhere on a Lot or on a street within the Plat except as otherwise permitted by the Architectural Review Committee. Private cars or private trucks (exclusive of all other Vehicles) owned by an owner or an owner's guests may be parked in the owner's driveway, but only if they do not display commercial signs or equipment. Commercial Vehicles may be parked in a street or driveway when necessary for providing services to an owner or to the Lot, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may be parked in the driveway of a Lot for up to a total of 48 hours per week for loading and unloading only, and never for dwelling purposes. No Vehicles may be repaired or maintained on or adjacent to a Lot, except within a garage.

**4.23 Garage Doors.** Garage doors must be kept closed, except when opened to permit persons or vehicles to enter and exit from a garage.

**4.24 Animals.** No horses, cattle, swine, goats, poultry, or other animal or fowl not customarily regarded as a household pet shall be kept on any Lot. If, in the sole judgment of the Board, it is determined that a pet, due to its size, breed, past or present aggressiveness or viciousness, or other factors, is a source of excessive disturbance, annoyance, or danger to other owners or persons, the Lot owner and the pet owner shall take such action as the Board reasonably may require to eliminate the disturbance, annoyance or danger, including without limitation the permanent removal of the pet from the Lot. The authority of the Board to restrict, prohibit, or direct the disposal of any pet shall not be construed as imposing any duty on the Board to do so. Owners having pets shall remove all solid pet waste from the Lot and the Common Areas.

**4.25 Statuary.** No statuary of any kind shall be placed upon a Lot without the prior written approval of the Architectural Review Committee.

**4.26 Damage and Insurance Rates.** No person, or entity, shall engage in any activity causing damage to, or any increase in insurance rates on, any improvements within the Subdivision.

**4.27 Clearing of Trees.** No person or entity, other than the Association, shall cut down, remove, or clear from any Lot any tree having a stem diameter of four inches or greater at five feet above the natural grade, except pursuant to plans approved by the Architectural Review Committee in accordance with Section 3 hereof or except as otherwise may be authorized in writing by the Association.

**4.28 Pollutants.** No person shall discharge pollutants into any street, easement, stormwater drain, or other portion of the Subdivision so as harmfully to affect any landscaping or vegetation or pollute the Stormwater Management System.

4.29 **Governmental Regulations.** No person, or entity, shall violate in any respect the provisions of any governmental laws or regulations applicable to the Subdivision.

4.30 **Common Areas.** No person, or entity, other than the Association shall erect, install, or alter any improvements on, or otherwise disturb the physical condition of, any portion of the common areas or other property which the Association is required to maintain pursuant to the terms of this Declaration.

4.31 **SWFWMD Regulations.** Each owner, at the time of construction of a dwelling or other improvements on his Lot, shall comply with the construction plans for the Stormwater Management System pursuant to Chapter 40D-4, Florida Administrative Code, approved and on file with SWFWMD. No owner may construct or maintain any dwelling or other improvements on, or undertake or perform any activity (including filling; excavating; storage of materials; or removal of trees, understory, or other vegetation) in, any wetland, wetland mitigation area, wetland buffer area, upland conservation area, or drainage easement area described in any SWFWMD approved permit and plat of the Subdivision, unless prior approval is received from SWFWMD, Venice Regulation Department, pursuant to Chapter 40D-4, Florida Administrative Code.

4.32 **Occupants Bound.** All provisions of this Declaration and the Rules and Regulations governing the conduct of an owner shall also apply to all occupants of the owner's Lot and all family members, tenants, guests, and invitees of the owner. Each owner shall cause all such occupants, tenants, family members, guests, and invitees to comply with such provisions and shall be jointly and severally responsible with such occupants, tenants, family members, guests, and invitees for any violation by them of such provisions. The lease of any Lot shall be deemed to include a covenant on the part of the tenant to comply with, and be fully bound by, such provisions.

4.33 **Sales Subject to Approval.** Prior to the sale or other transfer of any Lot to any person other than the transferor's spouse (who has been previously screened), the Lot owner or the personal representative of a deceased owner's estate shall notify the Association Board of Directors in writing of the name, address, and telephone number of the person to whom the proposed sale or other transfer is to be made, and provide a copy of the sale agreement and such other information as may be required by the Board of Directors. Within fifteen (15) business days of receipt of the transfer information and Application for Approval required herein, the Board of Directors shall either approve or disapprove the proposed sale, in writing, and shall notify the Lot owner or personal representative of its decision.

4.33.1 **Application.** Prior to sale or other transfer of any Lot, an Application for Approval must be submitted by the prospective transferee, to the Board of Directors or other designated person. All portions of this form **MUST** be completed. A non-refundable application fee not to exceed the maximum amount allowed by law must accompany each application. The Lot owner must sign said application.

**4.33.2 Application Fee.** The Board may require the payment of a nonrefundable application fee, in an amount not to exceed the maximum allowed by law, simultaneously with the Application for Approval; or other notice of acquiring title by other means. The notice shall not be complete without the application fee.

**4.34 Leasing and Guest Restrictions.** Leasing or renting of a Lot by an owner is not prohibited, but is restricted so as to maintain the owner-occupied residential nature of the community. No portion of a Lot (other than an entire Lot) may be rented or leased. No Lot may be rented or leased for a term of less than three (3) consecutive months or more than four (4) times in any one calendar year. If a lease spans more than one calendar year, it shall be counted only during the year the tenant first occupies the Lot.

The leasing and renting of Lots shall also be subject to the prior written approval of the Board. Any owner desiring to rent or lease a Lot shall submit such request in writing to the Association setting forth the name of the lessee, and supply such information as may be required by the Association at least twenty (20) days prior to the tenants occupying the Lot. Association approval of tenants shall not be unreasonably withheld. The Association shall have the right to terminate the lease and/or evict the tenants at the Lot owner's expense upon default by the tenant in observing any of the provisions of this Declaration, the Articles or Bylaws, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing or affecting the Subdivision.

The Association may charge an application fee in connection with each request for leasing approval but no such fee shall be in excess of the maximum allowed by law. No lease granted shall in any way be violative of or vitiate or lessen any part of this Declaration, or any restrictions upon the use or occupancy of the Lot or the Common Areas. The owner shall be jointly and severally liable with the tenant to the Association to repair any damage to the Common Areas resulting from any acts or omissions of tenants, tenants' families or tenants' guests (as determined in the sole judgment of the Association) and to pay for injury or damage to property caused by the negligence of tenants' families, invitees or guests. All leases shall be, as are hereby made, subordinate to any lien filed by the Association, whether prior to or subsequent to such lease.

The Board of Directors of the Association may by rule and regulation restrict and limit the occupancy of Lots by guests who occupy a Lot in the absence of the owner, including without limitation restricting the number of days such guests may occupy a Lot. Owners shall notify the Association in writing if their Lot is to be occupied by a guest in the Owner's absence.

## **5. COMMON PROPERTIES OR AREAS.**

**5.1 Designation of Common Areas.** The Common Areas are intended for the common use, enjoyment and benefit of the owners. By way of illustration, the

Common Areas may include wetland preserve areas, wetland buffer areas, stormwater retention areas, recreational areas, and other open areas. The Common Areas shall specifically include those areas as shown on the plat of the Subdivision.

**5.2 Use and Ownership of Common Areas.** The following provisions shall apply to various tracts as shown on the plat of the Subdivision:

**5.2.1 Tract A.** Tract A is comprised of a recreational area, and is hereby set aside for the use, enjoyment and benefit of the owners.

**5.2.2 Tracts B and D.** Tracts B and D are comprised of stormwater retention and open space areas and are hereby set aside for the use, enjoyment, and benefit of the owners. The Association may further install such plants, landscaping, and improvements as the Association may deem appropriate for the open space and retention pond character of Tracts B and D. The right of the Association to install such additional plants, landscaping, and improvements shall not be construed as an obligation to do so, and except for such Stormwater Management System installations as may be required by Sarasota County or SWFWMD, Tracts B and D may, in the discretion of the Association, be left in an unimproved state. A 25 foot wide vegetative buffer along the frontage of Venice Avenue in Tract D will be maintained in accordance with applicable provisions of the Venice Avenue Corridor Plan, and the approved landscape plan required by the Zoning Ordinance.

**5.2.3 Tract C.** Tract C is comprised of open areas including a roadway and utility facilities. The Association may, in its sole discretion, dedicate all or a portion of Tract C to Sarasota County for roadway purposes.

**5.2.4 Tract E.** Tract E is comprised of open space. Tract E shall remain undeveloped land and in accordance with the Note set forth on the Plat. All activities including, but not limited to filling, excavating, stock piling, alteration of vegetation (both trees and understory), and storing of materials shall be prohibited in Tract E, unless written approval is first obtained from Sarasota County's Resource Protection Office.

## **6. MAINTENANCE**

**6.1 General.** The responsibility for maintenance of the Subdivision shall be apportioned between the Association and the Lot owners in the manner set forth in this Section 6.

**6.2 Maintenance of the Common Areas.** The Association shall maintain and keep in good repair all portions of the Common Areas, which maintenance and repairs shall include, by way of illustration and not as a limitation: maintenance of the recreation areas, of all lakes, ponds, sumps and other stormwater retention/detention and water management areas, and related drainage control devices, facilities, and apparatus, that are part of the Stormwater Management System; maintenance of all landscaping and improvements that are part of the Common Areas; and maintenance of any pumps and

delivery system for irrigation water up to each Lot; and maintenance of the entrance to the Subdivision and Subdivision signage.

**6.3 Stormwater Management System.** In addition to its maintenance obligations under Section 6.2, the Association shall comply with the following provisions with respect to the Stormwater Management System:

6.3.1 The Association shall operate and maintain the Stormwater Management System (including supplemental littoral zone planting, maintenance of littoral zone vegetation, removal of exotic and nuisance species from littoral zones and wetlands mitigation areas, and periodic dredging and silt removal from stormwater retention areas) in compliance with all applicable regulations of Sarasota County, SWFWMD, and other governmental authorities.

6.3.2 The Association shall provide all stormwater, hydroperiod, wetland mitigation, littoral zone planting, and wetland planted buffer monitoring data collection and reporting required by Sarasota County, SWFWMD, or other governmental authorities.

6.3.3 No portion of the Stormwater Management System shall be materially altered without the prior written authorization of the Sarasota County Engineer or his designee.

6.3.4 In the event the Association, or any successor organization, shall fail to adequately maintain the Stormwater Management System in accordance with Sarasota County standards, Sarasota County shall have the right, but not the obligation, to enter the Subdivision for the purpose of maintaining the Stormwater Management System. All expenses incurred by Sarasota County in maintaining the Stormwater Management System shall be assessed prorata against the Lots and shall be payable by the owners of the Lots within sixty (60) days after receipt of a statement therefor. If any Owner fails to pay such assessment within such 60-day period, the assessment shall become a lien on such Owner's Lot. The rights of Sarasota County contained in this Section 6.3 shall be in addition to any other rights Sarasota County may have in regulating the operation and development of the Subdivision, but shall also be subject to any applicable judicial or legislative restrictions.

**6.4 Maintenance of Lawns, Landscaping and Irrigation Systems on Lots.** The Association shall maintain the lawn, landscaping and irrigation system on each Lot; provided, however, that each owner of a Lot shall be responsible for any reasonably required replacement of the lawn, and landscaping on his Lot, whether such replacement is required due to freezes or other acts of God, normal plant life expectancy, owner fault, or otherwise. All such maintenance and replacement shall be performed so that the lawn, landscaping, and irrigation system on each Lot are kept in good, safe, healthy, neat, trim, and orderly appearance and condition. Additionally, the Association shall maintain the lawn within any street right-of-way lying between any Lot boundary and the nearest pavement edge. As used in this Section 6.4, the term

"landscaping" shall mean all plants (including all vegetation, shrubs and trees, but excluding the lawns, citrus trees, and annuals) which are actually planted in the ground and are not located within a home or a screened enclosure.

**6.5 Maintenance and Care of Dwellings.** Each Dwelling and Building constructed on a Lot shall be maintained in a structurally sound, neat, clean and attractive manner, including, but not limited to walls, roofs, glass and screened areas and all other aspects and components of same by and at the expense of the Lot owner. Uniformity of appearance of improvements in the Subdivision is of paramount importance. The owner of each Lot is solely responsible for the repair and maintenance of all improvements constructed thereon. All repairs and maintenance shall be accomplished in a manner so as not to materially alter the color or exterior appearance of a dwelling or building without the prior written approval of the Architectural Review Committee.

If an Owner fails or refuses to perform an owner's maintenance responsibilities (including replacement of landscaping under Sections 6.4 and 6.5), the Association shall have the right, but not the obligation, to perform such maintenance responsibilities, provided the Association has first, by written notice to the owner, afforded the owner a period of not less than thirty (30) days within which to correct the failure. If the Association exercises its right to perform an owner's maintenance responsibilities, contractors, vendors, agents and employees of the Association, together with such other persons as may be authorized by the Board, shall have the right to enter upon the owner's Lot to perform such maintenance, all without liability or responsibility, criminal or civil, for trespass or any other action. All costs incurred by the Association in performing an owner's maintenance responsibilities, together with the administrative fee, shall be included in the Individual Expenses and shall be assessed against the owner's Lot as an Individual Assessment in accordance with these restrictive covenants.

**6.6 Administrative Fee.** If any Owner fails to perform any maintenance or responsibilities hereunder and the Association thereafter performs such responsibilities, then in addition to any other rights which the Association may have with respect to such failure, the Association shall be entitled to charge a reasonable administrative fee for its rendition of services necessary to cure such failure (the "Administrative Fee"). Unless a lower amount is established by the Board, the amount of the Administrative Fee shall equal ten percent (10%) of the cost to the Association for curing such failure.

## **7. PROPERTY RIGHTS**

**7.1 Owner's Easements of Enjoyment.** Every owner of a Lot shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights of the Association:

7.1.1 The right to charge reasonable admission and other fees for the use of any recreational facility which may be situated within the Common Area;

7.1.2 The right to dedicate or transfer all or any part of the Common Area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the members. No such dedication or transfer shall be effective unless an instrument executed by three-fourths of each class of members agreeing to such dedication or transfer has been duly recorded.

7.2 **Delegation of Use.** Subject to such limitations as may be imposed by the Bylaws, each Owner may delegate the right of enjoyment in and to the Common Areas and facilities to the members of the owner's family, and to guests, tenants and invitees.

7.3 **Granted to Utilities.** There is hereby granted to all public and private utility companies furnishing utility services to the Subdivision as of the time of recording of this Declaration, or hereafter authorized by the Association to furnish such services, a perpetual non-exclusive easement for the construction, installation, maintenance, repair, and replacement of the equipment, structures and other improvements by which such utility services are respectively provided over, under, across and through such portion of the Subdivision property as may be reasonably necessary therefor.

#### 7.4 **Other Easements.**

7.4.1 Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision map. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all improvements therein shall be continuously maintained by the owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible, or for which the Association is responsible.

7.4.2 No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right-of-way, and such easements, reservations and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.

7.5 **Right of Entry.** The Association, through its authorized employees and contractors, shall have the right after reasonable notice to the Lot owner, to enter any Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein. The Association, its authorized employees and contractors may enter any Lot at any time if necessary to address an emergency situation.

7.6 **No Partition.** There shall be no judicial partition of the Common Area, nor shall any owner or any other person acquire any interest in the Subdivision or any part

thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

## **8. MEMBERSHIP IN ASSOCIATION AND VOTING RIGHTS**

**8.1 Membership.** Every owner of a Lot shall be a Member of the Association. By acceptance of a deed or other instrument evidencing an ownership interest, each owner accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association, all as amended from time to time. The term "**Member**" shall include each person or entity owning any right, title or interest in any Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Membership in the Association is appurtenant to, and may not be severed from, the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any owner upon conveyance of such owner's interest in the Lot. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Lot, Common Area or other portion of the Property.

**8.2 Voting Rights.** Members of the Association shall be entitled to one (1) vote for each Lot owned.

**8.3 Common Ownership.** When any Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, such owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Lot may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the owners of that Lot. If the owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting owner until notified to the contrary by the other owner(s). Upon such notification no affected owner may vote until the owner(s) appoint their official representative pursuant to this paragraph.

### **8.4 Change of Membership.**

**8.4.1** Change of membership in the Association shall be established by recording in the Public Records of Sarasota County, Florida, a deed or other instrument

conveying record fee title to any Lot, and by the delivery to the Association, of a copy of such recorded instrument. The owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired.

8.4.2 The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the owner's real property. Membership in the Association by all owners shall be compulsory and shall continue, as to each owner, until such time as such owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

## **9. ASSOCIATION EXPENSES**

9.1 **Classification of Expenses.** The Association Expenses are classified as Common Expenses and Individual Expenses.

9.2 **Common Expenses.** Except for expenses that are classified as Individual Expenses, all expenses incurred by the Association pursuant to the provisions of this Declaration, the Articles of Incorporation or Bylaws in connection with the management, maintenance and administration of the Subdivision and the operation, maintenance, improvement, protection, management and conservation of the Common Areas shall constitute "Common Expenses" of the Association. Funds for the payment of the Common Expenses shall be collected by the Association through assessments against the Lots in accordance with the provisions of Section 10. By way of illustration, and not as a limitation, the Common Expenses shall include:

9.2.1 Costs of operation, maintenance, mowing, repair and replacement of the Common Areas and Tracts, and costs of Lot maintenance which is the responsibility of the Association, and costs associated with maintaining on-site and off-site surface water management system. Without limiting the foregoing, such expenses shall include costs associated with maintaining and repairing perimeter fences, the pool and pool house, roads and sidewalks, curbs, and subdivision signage.

9.2.2 Costs of management of the Subdivision and administrative costs of the Association, including professional fees and expenses and compensation to any manager, or management company, providing management services to the Association.

9.2.3 Costs of electricity and other utilities furnished to the Common Areas.

9.2.4 Costs of performing the Association's obligations under its governing documents.

9.2.5 Costs of labor, material and supplies used in conjunction with the performance of the Association's obligations under this Declaration, the Articles of Incorporation and Bylaws.

9.2.6 All taxes assessed against the Common Areas or the Association.

9.2.7 Premium costs of all property, liability and other insurance procured by the Association.

9.2.8 Costs incurred by the Association, upon approval by the Board, for the installation of improvements to the Common Areas or for the purchase of additional lands, leaseholds, or other possessory or use rights in lands or facilities, or memberships or other interests in recreational facilities acquired for the benefit of all the owners; provided that if the cost of any of such items is more than 30 percent of the amount of the total annual budget, the purchase or installation of such items shall first be approved by the affirmative vote of owners holding a majority of the total votes of the Association membership.

9.2.9 A reasonable contingency fund for the ensuing fiscal year in such amount, if any, as the Board may deem appropriate.

9.2.10 A reasonable annual reserve for anticipated major capital repairs, maintenance and improvement, and capital replacements in such amount, if any, as the Board may deem appropriate.

9.2.11 All other expenses deemed necessary or desirable by the Board for accomplishing the purposes, objectives, or responsibilities of the Association with respect to the Subdivision.

**9.3 Individual Expenses.** "Individual Expenses" shall mean all expenses (together with any applicable Administrative Fee and Attorney's Fees) incurred by the Association with respect to a Lot pursuant to the provisions of this Declaration in connection with any of the following:

9.3.1 The performance by the Association of any of the maintenance responsibilities of the owner of the Lot pursuant to Section 6.4 or Section 6.5.

9.3.2 The enforcement by the Association against the Lot or its owner of any of the restrictions or other provisions of this Declaration applicable to such Lot except for judicial actions in which the Lot's owner is the prevailing party.

9.3.3 The performance by the Association of any of its maintenance responsibilities pertaining to the Subdivision if, in the judgment of the Board, such performance was necessitated by the carelessness, negligence, or intentional act of the Lot's owner or the owner's family, guests, tenants, or invitees.

9.3.4 Any other action, service, or matter, the costs of which are specifically included in the Individual Expenses by the terms of this Declaration.

9.3.5 Individual Expenses shall also include any Fine assessed against a Lot's owner.

## **10. ASSESSMENTS**

10.1 **Classification of Assessments.** There shall be three types of Assessments, to-wit: a) Annual Assessments, which shall be levied pursuant to Section 10.2 for the payment of the Common Expenses; b) Special Assessments, which shall be levied pursuant to Section 10.3 to supplement the Annual Assessments; and c) Individual Assessments, which shall be levied pursuant to Section 10.4 for the payment of Individual Expenses.

10.2 **Annual Assessments.** The Common Expenses shall be payable through Annual Assessments levied by the Board against each Lot. Prior to December 31 of each year, the Board shall establish and adopt a budget for the Common Expenses for the next fiscal year and thereupon levy an Annual Assessment against each Lot. The budget and Annual Assessments shall be in such amount as shall be deemed sufficient in the judgment of the Board to enable the Association to pay the Common Expenses as and when they become due.

10.3 **Special Assessments.** The Board may levy a Special Assessment against each Lot in the event the revenue receivable by the Association pursuant to the Common Expenses budget adopted by the Board for any fiscal year is insufficient to pay the Common Expenses for such fiscal year; in the event of emergency situations requiring additional funds for the payment of the Common Expenses; or in the event Association reserves are insufficient to cover Association capital expenditures or deferred maintenance or other expenses.

10.4 **Individual Assessments.** Each Lot for which the Association incurs Individual Expenses pursuant to Section 9.3 shall be subject to Individual Assessments levied by the Board for the payment of such Individual Expenses. Except as otherwise provided by action of the Board, each Individual Assessment shall be deemed levied by the Board upon delivery of notice of such Individual Assessment to such owner, in accordance with the provisions of Section 10.6. Notwithstanding anything stated herein to the contrary, a fine shall not become a lien against a lot unless otherwise provided by the Homeowners Association Act.

**10.5 Apportionment of Annual and Special Assessments.** All Annual Assessments and Special Assessments levied by the Board for the payment of Common Expenses shall be allocated to and payable by the Lots in accordance with the following provisions:

**10.5.1 Assessment Shares.** Each Lot shall be allocated a numerical share (the "Assessment Share") on which the amount of Annual Assessments and Special Assessments levied against the Lot shall be based. One Assessment Share shall be allocated to each Lot.

**10.5.2 Assessment Amount.** All Annual Assessments and Special Assessments levied by the Board shall be apportioned among the Lots such that the ratio of 1) the Assessment amount charged to and payable to each Lot, to 2) the total Assessments then charged and payable by all the Lots (determined without regard to the provisions of Section 10.11), shall be the same as the ratio of 3) the Assessment Share allocated to such Lot, to 4) the total Assessment Shares allocated to all the Lots.

**10.6 Notice of Assessments.** Notice of Assessments shall be given as follows:

**10.6.1 Notice of Annual Assessment.** On or before December 31 of each year, the Association shall notify each owner of the amount of the Annual Assessment levied against such owner's Lot for the next fiscal year. The notice shall include a copy of the Common Expenses budget for such fiscal year. Failure to timely provide the said notice shall not, however, be a defense to the obligation of an owner to pay same.

**10.6.2 Notice of Individual Assessments.** Notice of each Individual Assessment shall be given by the Association to the owner of the Lot against which the Individual Assessment is levied within 90 days after the Individual Expenses to which the Individual Assessment relates are incurred or otherwise determined by the Association's Board of Directors.

**10.6.3 Notice of Special Assessments.** Notice of any Special Assessment levied by the Board shall be given by the Association to each owner within 90 days after Board approval of the Special Assessment. The notice shall include an explanation of the purpose of the Special Assessment and the basis on which the Special Assessment was levied.

**10.6.4 Failure to Notify.** In the event the Association should fail to notify an owner of any applicable Assessment on or before the time specified above, the levy and lien of such Assessment shall not be invalidated or otherwise affected, but the time for payment of the Assessment shall be extended by the number of days the notice is delinquent. So long as notice has properly been given, failure to receive any notice given by the Association shall not excuse an owner from the payment of any Assessment when due.

**10.6.5 Persons Entitled to Notice.** Notice of any Assessment need be sent by the Association only to the persons appearing on the Association's records as owners as of the date of the notice. It is the duty of each owner of a Lot that becomes subject to an Assessment subsequent to the date of notice thereof to ascertain from the Association the amount of the Assessment levied against such Lot. Failure to ascertain such amount shall not excuse any owner from the payment of any Assessment when due.

**10.7 Payment of Assessments.** Assessments shall be paid in accordance with the following provisions:

**10.7.1 Payment of Annual Assessments.** Annual Assessments shall be payable in full on the first day of the fiscal year or in such installments, if any, as may be approved by the Board.

**10.7.2 Payment of Special Assessments.** Each owner of a Lot against which a Special Assessment has been levied by the Board pursuant to Section 10.3 shall pay to the Association the full amount of the Special Assessment on or before the time established for payment by the Board; provided, however, that no Special Assessment shall be payable sooner than 30 days following notice thereof, and further provided that any Special Assessment may be payable in installments if, and only to the extent, approved by the Board.

**10.7.3 Payment of Individual Assessments.** Each owner of a Lot against which an Individual Assessment has been levied by the Board pursuant to Section 10.4 shall pay to the Association, within 30 days after notice thereof, the full amount of the Individual Assessment.

**10.8 Failure to Pay Assessments.** Each Assessment shall be the personal obligation of the owner of the Lot against which the Assessment is levied, ownership being determined as of the date of such levy. If any assessment is not paid within (15) fifteen days after the date on which payment of the Assessment is due, then:

**10.8.1** Interest shall accrue on the Assessment from the due date until paid at the rate of eighteen (18%) percent per annum, or such other legal rate as may be established by the Board;

**10.8.2** A late fee may be charged in an amount not to exceed the greater of Twenty-five Dollars (\$25.00) or five percent (5%) of the amount of the delinquent assessment of the assessment (or such lesser amount as may be established by the Board) shall be added to the Assessment;

**10.8.3** If the assessment is payable in installments, the remaining installments of such assessment may be accelerated by the Association to maturity if the delinquent installment, together with the delinquency charge and interest due

thereon, is not paid in full by the owner within (10) ten days after notice by the Association of its intent to accelerate such remaining installments; and

10.8.4 The Association may foreclose on its claim of lien and/or bring suit against the owner on his or her personal obligation to recover the amount of the Assessment, together with the delinquency charge and interest and all costs incurred by the Association, including attorney's fees, in preparation for and in bringing such suit.

10.9 **Proof of Payment of Assessment.** Upon the request of any owner or Institutional Mortgagee and the payment to the Association of such processing fee (not to exceed the highest amount allowed by law) as may be established by the Board, the Association shall furnish a certificate in writing signed by an officer of the Association showing the amount of unpaid assessments, if any, against any Lot in which such owner or Institutional Mortgagee has an interest, the year or years for which any such unpaid assessments were levied, and any interest or other charges owing thereon. Such certificate, in the absence of fraud, shall be conclusive evidence in favor of any person other than the owner of the payment of any Assessment therein stated to have been paid.

## 11. LIEN OF ASSESSMENTS

11.1 **Creation of Lien.** Each assessment levied by the Board against a Lot shall be secured by a lien in favor of the Association against the Lot and improvements thereon in accordance with the provisions of this Section. The lien shall secure not only the amount of the assessment, but also all future assessments, interest, delinquency charges, and costs of collection as provided by Section 10. The lien of every Assessment levied against a Lot shall attach, relate back and become a charge on the Lot, and all improvements thereon, upon the recording of the original Declaration. Notwithstanding anything stated herein to the contrary, a fine shall not become a lien against a lot unless otherwise provided by the Homeowners Association Act.

11.2 **Enforcement of Lien.** In the event any Assessment is not paid within 30 days after the assessment is due, the Association shall have the right to file a claim of lien in the Public Records. The assessment lien may be enforced by the Association by foreclosure suit in the same manner as a mortgage or construction lien foreclosure or in such other manner as may be permitted by law. In the event the Association files a claim of lien against any Lot, the Association shall be entitled to recover from the owner of such Lot the interest and delinquency charge provided by Section 10 and all costs, including attorney's fees incurred incident to the collection of the delinquent assessment, including but not limited to preparing, filing, and foreclosing the assessment lien; all such costs, delinquency charges, interest, and attorney's fees shall be secured by such lien.

11.3 **Priority of Lien.** Except as otherwise provided in Section 720.3085, Florida Statutes, the Assessment lien against each Lot shall be subordinate and inferior only to the lien of taxes and special assessments levied by Sarasota County and other

governmental bodies and to the lien of any first mortgage upon such Lot given to an Institutional Mortgagee prior to the recording of a claim of lien; provided, however, that such subordination shall not apply to assessments which become due and payable after a sale or transfer of the Lot pursuant to a decree of foreclosure of such mortgage or any other proceeding or transfer in lieu of foreclosure of such mortgage.

## **12. INSURANCE**

**12.1 Association Casualty Insurance.** The Association may obtain and maintain in effect fire and extended coverage insurance upon the insurable portions of the Common Areas and other Improvements that the Association is obligated to maintain in such amounts as the Board may deem appropriate. The premiums for such insurance shall be paid by the Association and shall be included in the Common Expenses.

**12.2 Association Liability Insurance.** The Association shall maintain in effect public liability insurance in such amount as the Board may deem appropriate covering loss to the Association from damage or injury caused by the negligence of the Association or any of its members, employees, or agents. The premiums for such insurance coverage shall be included in the Common Expenses. The owners shall have no personal liability upon any claims made against the Association, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess the Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

## **13. ENFORCEMENT OF RESTRICTIONS**

**13.1 Enforcement.** Except for the collection of delinquent assessments described above, enforcement of these covenants, conditions and restrictions shall be in accordance with this Section 13 and Chapter 720, Florida Statutes, and may be instituted by the Association, its successors or assigns, or any owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and to enforce any lien created by these covenants. Failure by the Association or any owner, or their successors or assigns, to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter. Further, the Association shall have the right of self-help to cure any violations that remain uncured after any required notice is given. If the Association elects to commence enforcement proceedings after delivery of notice thereof to any owner in violation hereof, and incurs any expenses in the commencement of such proceedings, the Association may prosecute such enforcement proceedings to conclusion notwithstanding subsequent voluntary compliance by the owner until the Association shall have recovered its expenses from such owner.

**13.2 Mediation of Disputes.** As required by Chapter 720, Florida Statutes, before commencing any other form of legal action to enforce the provisions of this

Declaration, the party desiring enforcement must first offer to mediate the dispute with a professional mediator.

**13.3 Litigation.** If a dispute subject to the terms of this Section 13 is submitted to mediation and is not settled by mutual agreement, either party shall have the right to bring suit for damages or equitable relief, including without limitation, injunctive relief to enforce the provisions of this Declaration. In any such litigation, the prevailing party shall also be awarded recovery of its attorney's fees, expert witness fees, and all other costs and expenses incurred in the prosecution or defense of the action, including all such expenses incurred in any failed mediation or settlement negotiations.

**13.4 Fines and Suspension of Common Area Use Rights.** In addition to the enforcement authority provided above and by state law, the Association may impose fines against a violator of the Declaration, Articles of Incorporation, Bylaws, or Rules in the manner provided in the Bylaws. The Association shall also be authorized to suspend a person's right to use the Common Areas in the same manner as fines are imposed.

#### **14. GENERAL PROVISIONS**

**14.1 Incorporation of the Land Use Documents.** Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

**14.2 Enforcement.** The covenants and restrictions contained in this Declaration may be enforced by the Association, any Owner, and any Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm, or entity violating or attempting to violate any covenant or restriction herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The SWFWMD will have the right to enforce, by proceedings at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Stormwater Management System. All parties agree that any dispute shall be determined by a judge and not a jury, and waive their right to a jury trial in any litigation arising out of this Declaration.

**14.3 Notices.** Notices shall be given as to owners by posting at the owner's dwelling or vacant Lot, or mailing first class postage prepaid to the owner's address maintained by the Association, or by posting a notice applicable to all owners at the Common Property.

#### 14.4 **Amendment.**

14.6.1 Subject to the provisions of paragraph 14.7, this Declaration may be amended by consent of owners of two-thirds (2/3) of the Lots as evidenced by recording an instrument executed by the Association in the Public Records.

14.6.2 Any amendment to the Declaration that would alter the Drainage System must have the prior approval of the SWFWMD.

**14.5 Mortgagee's Consent to Amendments.** This Declaration contains provisions concerning various rights, priorities, remedies, and interests of the Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by mortgages on the Lots. Accordingly, no amendment or modification of this Declaration impairing such rights, priorities, remedies, or interests of a Mortgagee shall be adopted without the prior written consent of Mortgagees holding liens on 50% or more of the Lots encumbered by mortgages to Mortgagees. Each Mortgagee agrees that it will either consent to a proposed amendment or give notice of refusal to consent by written notice to the party requesting such consent within 30 days after the request is received. If a Mortgagee does not respond within such time, the Mortgagee's consent will be deemed given, and an affidavit to such effect recorded in the Public Records by the party requesting the consent will be sufficient evidence to make the requested amendment; provided, that a photocopy of the documentation proving receipt of the request to the Mortgagee is attached to the affidavit. This paragraph shall not apply or be construed as a limitation on those rights of Declarant, the Association, or the owners to make amendments that do not adversely affect the Mortgagees.

**14.6 Captions and Statement of Purpose.** Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

**14.7 Gender and Plural Terms.** Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed to mean the corresponding plural form thereof and vice versa.

**14.8 Severability; Amendments to Laws.** If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of

time as may be permitted by law. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

**14.9 Duration and Renewal.** This Declaration (but excluding the easements herein created, which are perpetual) and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained herein, including, without limitation, the provisions for assessment of Lots, shall run with and bind all of the Lots and inure to the benefit of the owners, and their respective legal representatives, heirs, successors, and assigns, for a term of (30) thirty years from the date of the recording of the original Declaration (February 13, 2004), after which time this Declaration shall be automatically renewed and extended for successive periods of (10) ten years each unless at least one year before the termination of the 30-year period or before each such 10-year extension, as the case may be, there is recorded in the Public Records an instrument agreeing to terminate this Declaration, which instrument is signed by 75% of all owners and all Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the 30-year term or the 10-year extension during which such instrument was recorded, as the case may be.